



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	25-004
Appellant:	Carla Cristina Massai Fedatto and Mauricio Fedatto
Respondent: (Assessment manager)	Craig Bates
Co-respondent: (Concurrence agency)	Noosa Shire Council
Site address:	5 Twilight Street, Sunrise Beach Qld 4567, described as Lot 993 on CP887112 – the subject site

Appeal

Appeal under section 229(1)(a)(i) and schedule 1, table 1, item 1(a) of the *Planning Act 2016* against the assessment manager's refusal, at the direction of the concurrence agency, of a development application for a development permit for building work for 'modifications and extension to an existing carport' (Reference Bartley Burns Building Approval Reference BP 24/0194, Noosa Shire Council RAB 24/0168).

Date and time of hearing:	Friday 16 May 2025 at 11.00 am
Place of hearing:	The subject site
Tribunal:	Derek Kemp – Chair Suzanne Bosanquet – Member
Present:	Carla Cristina Massai Fedatto (Appellant and property owner) Allan Hazell (Noosa Shire Council, Co-respondent)

Decision:

The Development Tribunal, in accordance with section 254(2)(d) of the *Planning Act 2016* sets aside the decision of the Assessment Manager to refuse the Building Development Application and orders the Assessment Manager to re-make the decision within 25 business days of the date of this decision notice, as if the Concurrence Agency had no requirements and, if the Assessment Manager approves the application, including the following conditions along with any other conditions the Assessment Manager decides are reasonable and appropriate:

- (a) The carport is to be built and maintained to have the appearance of a lightweight structure with minimum profile and no parapets.

- (b) The front of the carport is to provide a minimum of 720mm setback from the front property boundary.
- (c) The carport is to remain open to the street, with no gates, and each side of the carport is to remain open with no cladding.

Background

The subject site

- 1. The subject site is a regular rectangular block of 642 square metres, with a 19.023 metre frontage to Twilight Street, developed with a single storey residence.

The proposal

- 2. The proposal is for the refurbishment of an existing carport, extending its width to 6400mm and reducing its depth to 5500mm, to provide a minimum setback of 720mm to the front property boundary, and relocating some posts to accommodate the proposal.

Assessment of the application

- 3. On 12 February 2025 the Referral Agency, Noosa Shire Council, directed the Assessment Manager to refuse the application.
- 4. Council's stated reasons for refusal were:

... the proposed development does not comply with and cannot be conditioned to comply with the following performance criteria:

Noosa Plan 2020 – Low Density Residential Zone Code

PO9 Buildings and structures are designed and sited to:

- f) be consistent with the predominant character of the streetscape;
It has been considered that the location of the proposed carport within the road boundary setback is not consistent with the predominant character of the streetscape.*

It is Council's view that the predominant character of the streetscape, with respect to building location, consists of buildings and structures providing a greater road boundary setback than that of the current proposal.

- 5. Council also noted:

It appears Council hold no approval documentation, or any record of the existing carport structure.

Jurisdiction

- 6. Section 229(1) of the PA provides that schedule 1 ('the schedule') of the PA states the matters that may be appealed to a tribunal.
- 7. Section 1(1) (b) of the schedule provides that the matters stated in table 1 of the schedule ('table 1') are the matters that may be appealed to a tribunal. However, subsection 1(2) of

the schedule provides that table 1 only applies to a tribunal if the matter involves one of the matters set out in section 1(2).

8. Section 1(2)(g) provides that table 1 applies to a tribunal if the matter involves a matter under the PA, to the extent the matter relates to the *Building Act 1975*, other than a matter under that Act that may or must be decided by the Queensland Building and Construction Commission.
9. Table 1 thus applies to the tribunal in this appeal. Accordingly, the tribunal is satisfied that it has jurisdiction to hear and decide this appeal.

Decision framework

10. Generally, the onus rests on an appellant to establish that an appeal should be upheld (section 253(2) of the PA).
11. The tribunal is required to hear and decide an appeal by way of a reconsideration of the evidence that was before the person who made the decision appealed against (section 253(4) of PA); however, the tribunal may nevertheless (but need not) consider other evidence presented by a party with leave of the tribunal, or any information provided under section 246 of PA.
12. The tribunal is required to decide an appeal in one of the ways mentioned in section 254(2) of the PA, and the tribunal's decision takes the place of the decision appealed against (section 254(4)).
13. The tribunal must not make a change, other than a minor change, to a development application (section 254(3)).

Material considered

14. The material considered in arriving at this decision was:
 - (a) 'Form 10 – Notice of Appeal' (with the supporting documents and further information contained therein).
 - (b) 'Development Application – Refusal' issued by the Assessment Manager (Craig Bates) dated 27 February 2025.
 - (c) 'Referral Agency Response Directing Refusal' issued by Noosa Shire Council, dated 12 February 2025.
 - (d) Noosa Plan 2020, '*Low Density Residential Zone Code: PO6*'.

Findings of fact

15. The tribunal makes the following findings of fact:

Findings concerning the proposed development

- (a) The proposed carport will have 6400mm frontage to Twilight Street (33.6% of the subject property's frontage to Twilight Street).
- (b) The existing carport extends up to the front property boundary.

Relevant findings concerning the streetscape

- (c) The Tribunal finds that the streetscape of concern, from which the proposed development would only be partially visible, extends:
 - to the junction of Twilight Street with Rainbow Crescent to the south
 - from the subject site to the far corner of Hawley Court on the western side of Twilight Street
 - from the subject site to the driveway into 14 Twilight Street on the eastern side of Twilight Street.
- (d) This streetscape largely comprises properties with high walls, fences and hedges with dense landscaping and mature trees, including on the verges in the vicinity of the subject site.
- (e) The existing carport and the proposed extension to the existing carport are well shielded and their street view largely obscured by the dense landscaping, two metre high solid fences and two metre high dense hedges, mature trees and high shrubs on the subject property; on the adjoining property to the south and, on the street verges in the vicinity.
- (f) The property immediately to the north is a new two storey dwelling set well back on a cleared lot, with landscaping still to be installed.
- (g) This dwelling has an imposing bulk that will dominate the streetscape on that side of the street and far exceeds the limited perceived bulk of the existing dwelling on the adjoining subject site and will mitigate the relatively minor perceived bulk of the existing carport and its proposed extension.
- (h) The Tribunal noted that a carport, with no notable front boundary setback, has been built on the property at 8 Twilight Street opposite the subject property. The Tribunal noted Council's advice at the hearing that Council had recently issued a Show Cause notice in relation to this unapproved development.
- (i) The Tribunal noted that the property on the corner of Hawley Court and Twilight Street (2 Hawley Court, the second dwelling to the north of the subject property) incorporates two sets of large garages with a substantial gable roof built up to the front property boundary. Council advised at the hearing that this recent development, with these two double garages built up to the front property boundary, had received formal approval.

Reasons for the decision

- 16. The Tribunal noted that proposed extensions would result in only a minor extension to the width of the existing carport and would result in a substantial increase in the setback of the carport from the front property boundary to at least 720mm.
- 17. The Tribunal noted that the existing carport appears to have no approval, and had been erected more than seven years ago, with Council having issued no notices and taken no remedial actions.
- 18. The Tribunal gave no weight to these considerations, and formed the opinion that it would approve the proposed carport, subject to the stipulated conditions, if it were an application for a new development.

19. The Tribunal formed the opinion that the proposed carport would have negligible, if any, adverse impact on the existing streetscape, provided it were built as a lightweight structure with no gates and open sides.
20. The Tribunal considered the conditions requiring the removal of the proposed parapets and requiring an open structure were only a minor variation to the proposed development as permitted under Section 254(3) of the *Planning Act 2016*.

Derek Craven Kemp
Development Tribunal Chair
Date: 21 May 2025

Appeal rights

Schedule 1, table 2, item 1 of the *Planning Act 2016* provides that an appeal may be made against a decision of a Tribunal to the Planning and Environment Court, other than a decision under section 252, on the ground of -

- (a) an error or mistake in law on the part of the Tribunal; or
- (b) jurisdictional error.

The appeal must be started within 20 business days after the day notice of the Tribunal decision is given to the party.

The following link outlines the steps required to lodge an appeal with the Court.

<http://www.courts.qld.gov.au/courts/planning-and-environment-court/going-to-planning-and-environment-court/starting-proceedings-in-the-court>

Enquiries

All correspondence should be addressed to:

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